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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,168	04/09/2001	Allan J. Lepine	IAM 0498 NA	1328
27752	7590	03/24/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/829,168

Applicant(s)

LEPINE

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on 2-2-04

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1, 3-12 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3-12 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the admitted prior art on pages 1 and 5 of grandparent SN 09/163,778

Applicant is referred to paragraph No. 3 of the Office Action dated October 29, 2003.

4. Claims 7-9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over pages 1 and 5 of SN 09/163,778.

Applicant is referred to paragraph No. 4 of the October 29, 2003 Office Action.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over pages 1 and 5 of SN 09/163,778 as applied to claims 1, 3-5, 7-9, 11 and 12 above, and further in view of Gil et al (5,709,888).

Applicant is referred to paragraph No. 5 of the October 29, 2003 Office Action.

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6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over pages 1 and 5 of SN 09/163,778 as applied to claims 1, 3-5, 7-9, 11 and 12 above, and further in view of Fujimori (5,294,458).

Applicant is referred to paragraph No. 6 of the October 29, 2003 Office Action.

7. Claims 1 and 9 are also rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Meyer (EP 0,259,713, pages 3-4).

Applicant is referred to paragraph No. 7 of the October 29, 2003 Office Action.

8. Claims 3-5, 11 and 12 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer.

Applicant is referred to paragraph No. 8 of the October 29, 2003 Office Action.

9. Claim 6 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer as applied to claims 1 and 9 above, and further in view of Gil et al.

Gil et al is applied as in paragraph No. 5 of the October 29, 2003 Office Action.

10. Claim 10 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer as applied to claims 1-9 above, and further in view of Fujimori.

Fujimori is applied as in paragraph 6 of the October 29, 2003 Office Action.

11. Applicant's arguments filed February 2, 2004 have been fully considered but they are not persuasive. Applicant's claims are equivalent to feeding a beagle pup its mother's milk since there is no patentable distinction between natural beagle milk and the claimed composition. Each component in the amount claimed by applicant is

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present in natural beagle milk. The manner of producing applicant's artificial milk has not been claimed and thus cannot be relied upon to distinguish over the prior art.

One of ordinary skill in this art would have been motivated to produce artificial beagle milk for the same reason that other artificial food products are produced, i.e. to meet demand if supply of the natural food product is short. Once this artificial milk is produced, it would have been obvious to include any beneficial additives, such as FOS. The FOS of Fujimori is an obvious additive to such milk since FOS improves intestinal health of puppies and reduces the odor of puppy's waste products.

Applicant's remarks regarding Meyer are not convincing. Whereas whey may include components other than protein, as applicant contends based upon page 4888 of the Encyclopedia of Food Science submitted by applicant, the protein itself is composed only of albumin and globulin substances. According to page 4889 of the Encyclopedia, the proteins present in whey are 50% beta lactoglobulin, 25% alpha lactalbumin and 25% other protein. However, the other proteins are composed of albumin and globulin as well, according to page 3, last full paragraph of the Meyer translation. Thus, the albumin—globulin portion of the ratio disclosed on page 4 of the Meyer translation accounts for all components of the whey protein. As a result, applicant's claimed weight ratio is disclosed by Meyer.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

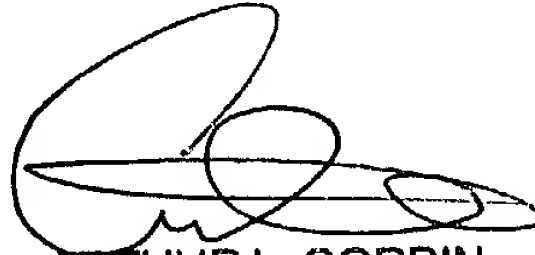
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday-Friday from 10:30am to 8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (571) 273-1399.

A. Corbin/dh  
March 19, 2004

  
ARTHUR L. CORBIN  
PRIMARY EXAMINER  
3-22-04